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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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COMMERCE COMMISSION

2002 NOV 20 A 11: 16

Yaodi Hu,)
v.)
Illinois Power Company)

Docket No. 02-0249 CHIEF CLERK'S OFFICE

Yaodi Hu's Response to City of Danville's "Special and Limited Appearance for the Purpose of Challenging the Jurisdiction of the Illinois Commerce Commission over the City of Danville, an Illinois Municipal Corporation"

I. Background

In April 2002, Yaodi Hu as Complainant filed his formal Complaint with ICC. In the end of May, 2002, City of Danville Electrical Inspector Eugene Underwood came to 428 E. Main St. Danville 61832, the subject property, declaring the shut down of the entire building, retaliating the filing of the Complaint with ICC. Subsequently, Yaodi Hu filed an Emergency Motion for Injunction, enjoining Illinois Power from demanding the installation of a 400 AMP electrical meter outside of the subject property.

August 28, 2002, Administrative Law Judge entered a scheduling order. September 11, 2002 Yaodi Hu submitted his response to Illinois Power's information Request. Also, September 11, 2002, Yaodi Hu attended a purported "settlement conference" with City of Danville, Illinois Power as intended participant. That settlement conference yielded no progress in resolving the current conflict because of the obvious lack of good faith on the part of Illinois Power and the refusal of City of Danville to participate.

In that September 11, 2002 conference, Illinois Power still refused to clarify its position as to what is required by Illinois Power regarding the subject property. Illinois Power also refused to withdraw its demand of installing a 400 AMP electrical meter outside of the subject property. Still, Illinois Power blamed the entire situation on the City of Danville. In light of that development, Yaodi Hu subsequently filed his Motion to join the City of Danville as necessary and indispensable party. Illinois Power filed its

response taking officially a neutral position, but implying its opposition in the body of the Response, showing again its hypocrisy, lack of good faith and actual partnering relationship with the City of Danville.

II. Other Proceedings

In June 2002, after the "shut down" of the building by the City of Danville, Yaodi Hu also filed his formal complaint with U.S. Government, Department of Housing and Urban Development (HUD) regarding the violation of Fair Housing Act by both Illinois Power and Eugene Underwood of City of Danville, with original Inquiry number of 141126 against Illinois Power and 141121 against City of Danville. September 30, 2002, the legal department of HUD determined that it has proper jurisdiction of the subject property regarding the violation of Fair Housing Act by both City of Danville and Illinois Power. Yaodi Hu's complaint is now filed with a formal HUD Case number of 05-02-1022-8 against Illinois Power and 05-02-1021-8 against City of Danville.

Currently, HUD is conducting conciliation mandated by the Fair Housing Act, 42 U.S.C. 3601 et al. According to the last conversation Yaodi Hu had with the HUD case worker in mid-October 2002, it appears that City of Danville is willing to negotiate a settlement with Yaodi Hu. Regarding the willingness to conciliate and settle on the part of Illinois Power, Yaodi Hu has no knowledge at all. Other than posturing itself in litigating this case and trying to dismiss this ICC proceeding, Illinois Power refused all along to take any practical step toward the resolution of this conflict.

III. ICC Does have Subject Matter Jurisdiction over Illinois Power and City of Danville in our Instant Case

"Subject matter jurisdiction is the power to hear and determine causes of the general class of cases to which the particular case belongs." *Newkirk v. Bigard* (1985) 109 Ill. 2d 28, 36. *United Biscuit Co. of America v. Voss Truck Lines, Inc.* (1950), 407 Ill. 488, 499; *Taylor Coal Co. v. Industrial Com.* (1922) 301 Ill. 381, 384. The "subject

matter jurisdiction” granted to ICC is the exclusive power to supervise and regulate public utility company, especially regarding the rate and services.

“In our opinion the General Assembly, by exempting from the Antitrust Act those activities of any public utility which are subject to the jurisdiction of the Commerce Commission, reaffirmed the policy expressed in the Public Utilities Act that strict supervision and regulation, particularly with respect to rates charged and services provided, make an effective safeguard against the evils of monopoly at which antitrust laws are traditionally directed.” *Seafarers Union v. Commerce Com.* (1970) 45 Ill. 2d 527.

“The policy established by the Public Utilities Act is to provide the public with efficient service at a reasonable rate, by compelling an established public utility occupying a given field to provide adequate service at the same time protecting it from ruinous competition” *Bartonville Bus Line v. Eagle Motor Coach Line*, 326 Ill. 200 (1927). “The convenience and need of the public are of primary importance under the Public Utilities Act.” And the Act “contemplates actual supervision of every public utility, so that continuous, uniform and satisfactory service shall be rendered to the public at reasonable rates and without discrimination.” *Commerce Comm’n v. Chicago Rys. Co.* 362 Ill. 559 (1936)

Above cases illustrate that ICC has subject matter jurisdiction over the rate and services of a public utility. Anyone, including the city of Danville, involved in that subject matter would be subject to the subject matter jurisdiction of ICC.

City of Danville is correct to point out that ICC has no subject matter jurisdiction over City of Danville when it provide utility service to the public as a municipal corporation. The problem with that contention of City of Danville is that it is not relevant in our instant case, because (1) City of Danville is not operating as a municipal public utility in our instant case, (2) ICC does have subject matter jurisdiction over Illinois Power and (3) City of Danville is operating TOGETHER with Illinois Power, in denying electricity service to Yaodi Hu.

“If a person or corporation assumes to act as public utility and exercises the powers thereof, although unlawfully, it will be considered a public utility. If such were not the true rule then the present public policy of this State would be of no force or

effect.” *Illinois Power & Light Co. v. Consolidated Coal Co.*, (1928) 251 Ill. App. 49. This case clearly illustrate that when City of Danville denied electricity service to Yaodi Hu together with another public utility company, which is subject to Public Utility Act, it will be considered as public utility company.

City of Danville clearly confuses “jurisdiction” with “supervision” in Section 5/4-101 of the Public Utilities Act, which states: “The Commerce Commission shall have general supervision of all public utilities...”

The fact that ICC does not have general supervision power over City of Danville, a Municipal Corporation, does not mean that ICC does not have jurisdiction over City of Danville. Both Federal District Court and Circuit Court of State of Illinois in Vermilion County does not have general supervision power over City of Danville, but both could acquire subject matter jurisdiction and personal jurisdiction over City of Danville in a legal proceeding.

IV. Public Utility Act Pre-Empted City of Danville from Applying its Ordinance to a Public Utility when it Decide if it would Render Electricity Service to its Customer

“The longstanding statewide interest in the filed of public utility regulation is manifested by the existence of the Illinois Commerce Commission and by the comprehensive and exclusive regulatory authority the commission has exercised for nearly 70 years.” (See *Village of Apple River v. Illinois Commerce Com.* (1960), 18 Ill. 2d 518, 523-25, 165 N.E. 2d. 329; *City of Chicago v. Hastings Express. Co.* (1938), 369 Ill. 610, 615, 17 N.E. 2d 576; *Chicago Motor Coach Co. v. City of Chicago* (1929), 337 Ill. 200, 209-10, 169 N.E. 22) Unlike the filed of landlord-tenant law, the State’s interest in uniform utility regulation has traditionally been viewed as strong and pervasive. The regulation of all aspects of utility business and service has long been held to be the exclusive province of the Illinois Commerce Commission and the exclusivity of the commission’s jurisdiction has been repeatedly upheld against the assertions of municipal authority over matters of health and welfare. We find that our State legislature and the courts of this state long ago recognized the overriding need for uniform,

comprehensive utility regulation by vesting exclusive regulatory jurisdiction over this area in a single regulatory agency. Permitting every home rule unit in this State to regulate in this field would subject utilities to multiple and sometimes conflicting governmental requirements which could only result in confusion and would seriously disrupt the regulatory scheme now in place.” *Peoples Gas Light & Coke v. Chicago* 125 Ill. App.3d 95.

Public Utilities Act pre-empted city of Danville’s Ordinance regulating the electric service supply by Illinois Power. *Hutchcraft Van Serv. V. Human Relations Com.* 104 Ill. App. 3d 817. *City of Chicago v. Hastings* 369 Ill. 610. *Peoples Gas Light & Coke v. Chicago* 125 Ill. App.3d 95. *City of Des Plaines v. Chicago & North Western Ry. Co.* (1976) 65 Ill. 2d. 1 The application of Danville’s Ordinance to electric service supply by Illinois Power is “beyond the scope of home rule power envisioned by the framers of article VII, section 6(a), of our State constitution.” *Peoples Gas Light & Coke v. Chicago* 125 Ill. App.3d 95. The electric service supply is simply not a local concern subject to the exercise of local government power which primarily pertains to the city’s government and affairs.

The Legislative intent of the General Assembly of State of Illinois is further explicitly demonstrated in *Electric Supplier Act*, 220 ILCS 30/2.1. 220 ILCS 30/2.1 states: “It is declared to be the public policy of this State, pursuant to paragraphs (h) and (I) of Section 6 of Article VII of the 1970 Illinois Constitution, that, except as otherwise provided in this Act, any power or function set forth in this Act to be exercised by the State is an exclusive power or function of and such power or function may not be exercised concurrently, either directly or indirectly, by any unit of local government.”

“The Act contemplates actual supervision of every public utility, so that continuous, uniform and satisfactory service shall be rendered to the public at reasonable rates and without discrimination.” *Fountain Water District v. ICC* 291 Ill.App. 3d 696.

Therefore, Danville simply does not have any legal authority to deny electric service to Yaodi Hu citing violation of its Ordinance.

Applying City of Danville’s Ordinance in denying electric service to Yaodi Hu exceeded its constitutional power under Article VII section 6 (a) of the Illinois Constitution of 1970. *Kirwin v. Peoples Gas Light & Coke Co.* 173 Ill. App. 3d 699.

The Metropolitan Sanitary District of Greater Chicago v. the City of Des Plaines 63 Ill. 2d 256. City of Danville's denial of electricity service to Yaodi Hu violated the letter and spirit of Public Utility Act. City of Danville is not above the law. When it violated the Public Utility Act, it is subject to the rule of law.

City of Danville contended that "it was not the intent of the state legislature to provide Mr. Hu a forum to challenge the ordinances or conduct of an Illinois municipal corporation before the Illinois Commerce Commission." That contention is without any support of legal authority. The judicial doctrine of preemption simply "repealed" City of Danville's ordinance regulating the electric service supply by Illinois Power. Neither Illinois Power nor City of Danville should be allowed to hide behind the shield of municipal ordinance to blatantly violate the Public Utility Act without subject to the jurisdiction of ICC, which is the guardian of the Public Utility Act.

V. ICC can Acquire Personal Jurisdiction over City of Danville

ICC's personal jurisdiction over city of Danville can be acquired through proper service. *Newkirk v. Bigard* 109 Ill. 2d 28. *Abbott Laboratories Inc. v. Illinois Commerce Commission* 289 Ill. App. 3d 705 *Business & Professional People v. Illinois Commerce Commission* 136 Ill. 2d 192.

ICC has subject matter jurisdiction over City of Danville when 220 ILCS 5/9-241 is violated. 220 ILCS 5/10-108 deals with Complaint, notice and parties. It states: "Complaint may be made by the Commission, of its own motion or by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial mercantile, agricultural or manufacturing society, or any body politic or municipal corporation by petition or complaint in writing, setting forth ANY ACT or things done or omitted to be done in violation, or claimed to be in violation, of ANY PROVISION of this Act, or of any order or rule of the Commission."

220 ILCS 5/10-108 further states: "upon the filing of a complaint the Commission shall cause a copy thereof to be served upon the person or corporation complained of which shall be accompanied by a notice, requiring that the complaint be satisfied and answer within a reasonable time to be specified by the Commission or

within the discretion of the Commission, by a notice fixing a time when and place where a hearing will be had upon such complaint.”

VI. ICC has Exclusive Original Subject Matter Jurisdiction, and its Administrative Remedy has to be Exhausted

ICC has exclusive original subject matter jurisdiction over Public Utilities Companies regarding rate and services. *Sutherland v. Illinois Bell* 254 Ill. App. 3d 983 *DiBello v. Illinois Commerce Commission* 241 Ill App. 3d 1088. *Seafarers Union v. Commerce Com.* 45 Ill. 2d 527. “The commission has the power to regulate their rates and services, ...” *City of Chicago v. Commerce Com* (1938) 356 Ill. 503.

“The line of demarcation between matters within the exclusive jurisdiction of the Commerce Commission and matters subject to control by municipalities lies between matters which are an intimate part of and of the closest connection with the public utility service and transportation itself, which matters are within Commerce Commission’s jurisdiction, and matters which in no wise interfere with or overlap such control by the Commerce Commission, which matters are subject to municipal control.” *City of Chicago v. Hastings Express Co.*, (1938) 17 N.E. 2d 576, 369 Ill. 610. Public Utility’s service to its customers is certainly within the general supervision power of ICC and is beyond local municipal control.

The administrative remedy from that exclusive original subject matter jurisdiction has to be exhausted before any action could be brought in any other forum. *Thrasher v. Commonwealth Edison Co.* (1987) 159 Ill. App. 3d. 1076, 1079, 513 N.E. 2d. 460, 462; *Klopp v. Commonwealth Edison* (1977), 54 Ill, App. 3d. 671, 675, 370 N.E. 2d. 822, 825; *Adler v. Northern Illinois Gas Co.* (1965) 57 Ill. App. 2d. 210, 218, 206 N.E. 2d. 816, 819. *Newkirk v. Bigard* (1985) 109 Ill. 2d. 28 *Graham v. Illinois Racing Board* (1979), 76 Ill. 2d. 566, *Illinois Bell Telephone Co. v. Allphin* (1975) 60 Ill. 2d.350.

The contention by City of Danville that “there are avenues available to Mr. Hu for such a challenge;...” is simply unsupported by any legal authority.

VII. Code of Civil Procedure 735 ILCS 5/2–405(a) & 406(a) is Applicable when ICC Acts as “Quasi-Judiciary” in Contested Case

“The term ‘jurisdiction,’ while not strictly applicable to an administrative body, may be employed to designate the authority of the administrative body to act, and as such, the issue is governed by analogy to the rules which are applicable to the courts” *Newkirk v. Bigard* (1985) 109 Ill.2d. 28. *Pocahontas Mining Co. v. Industrial Com.*, (1922), 301 Ill. 462; 474; *People ex rel, Peterson v. Turner Co.* (1976), 37 Ill. App. 3d. 450, 461 n.3; *Beam v. Erven* (1971), 133 Ill. App. 2d 193, 196. *Chicago v. Fair Employment Practices Com.*(1976), 65 Ill. 2d 108, 112

Therefore, 735 ILCS 5/2 – 405(a) and 406 (a) are both applicable in our instant contested case. 735 ILCS 5/2 – 406(a) states: “ If a complete determination of a controversy cannot be had without the presence of other parties, court may direct them to be brought in. If a person, not a party , has an interest or title which the judgment may affect, the court, on application, shall direct such person to be made a party.”

735 ILCS 5/2 – 406(a), Code of Civil Procedure requires the joinder of all persons not parties to the litigation if those persons have interests which may be affected by a judgment in the litigation. A “necessary party” is defined as a person whose presence is required for any of three reasons: (1) to protect the person’s interest in the litigation’s subject matter; (2) to enable the court reach a decision which will protect the interests of persons already parties; or (3) to enable the court to make a complete determination of the controversy. *Peo. Ex rel. Dep’t of Transp. V. Walliser* 258 Ill. App. 3d 782, *Burt v. Board of Education of Coal City Community Unit School District No. 1* (1985) 132 Ill. App. 3d. 393, 477 N.E.2d. 247.

Applying the statute and the case law to our instant case, it is clear that City of Danville should to be joined as a necessary respondent party, in order to determine the fact and resolve the current conflict, especially when Illinois Power has been trying to exonerating itself by pointing fingers at City of Danville as the sole reason of denying electrical service to Yaodi Hu. “In *Georgeoff v. Spencer* (1948) 400 Ill. 300, 302, 79 N.E. 2d 596, our supreme court held that if the lack of proper parties is brought to the

attention of the court, it should not proceed further until the omission has been corrected.” *Edgewater Construction v. Wilson Mortgage* 44 Ill.App. 3d 220.

735 ILCS 5/2-405(a) Joinder of defendants is also applicable here: “any person may be made a defendant who, either jointly, severally or in the alternative, is alleged to have or claim an interest in the controversy, or in any part thereof, or in the transaction or series of transactions out of which the controversy arose, or whom it is necessary to make a party for the complete determination or settlement of any question involved therein,

City of Danville is a necessary party, because throughout the entire period from July 2001, up until now, it is involved in denying electrical service to Yaodi Hu.

VIII. 83 Ill. Adm. Code Section 200.40 Also Allows Inclusion of City of Danville as a Party Respondent

83 Ill. Adm. Code Section 200.40 Definitions states:

“Party” means any person who initiates a Commission proceeding by filing an application, complaint or petition with the Commission, or who is named as a respondent, or who is allowed by the Commission or by statute to intervene in a proceeding.

“Person” means any individual, partnership, corporation, governmental body or unincorporated association.

The plain reading of the above definition clearly indicates that City of Danville, a Municipal Corporation, can be properly joined as a Party Respondent by ICC which has the jurisdiction over the subject matter brought by the Petitioner Yaodi Hu.

IX. Conclusion

City of Danville ought to be joined as a necessary and indispensable party respondent. ICC ought to issue an order enjoin City of Danville from using its police power and

ordinance denying electricity service to any resident in city of Danville. If City of Danville refuses to comply, ICC ought to initiate an injunctive proceeding in circuit court per Public Utility Act.

Respectfully submitted



CERTIFICATE OF SERVICE

NOV. 12, 02

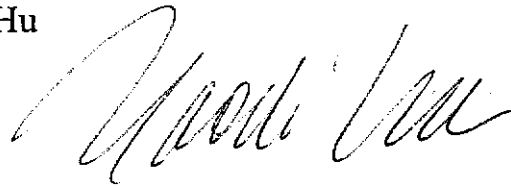
The undersigned hereby certifies that a true and accurate copy of the forgoing was served upon

Shig W. Yasunaga Illinois Power Co. 500 S. 27th st. Decatur IL 62521

Derek J. Girton Action & Snyder 11 E. North st. Danville IL 61832

By depositing the same in the United State mail box, properly addressed and with first class stamp fixed on November 12, 2002.

Yaodi Hu



NOV. 12, 02